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09/18/95	11/05/95	MUSAKA		
APPLICATION NUMBER	FILING DATE	FIRST NAMED APPLICANT	ATTORNEY DOCKET NO.	

IM22/0904

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PADGETT, M
EXAMINER

1762
ART UNIT PAPER NUMBER

DATE MAILED: 09/20/01

Below is a communication from the EXAMINER in charge of this application
COMMISSIONER OF PATENTS AND TRADEMARKS

ADVISORY ACTION

THE REPLY FILED FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check only a) or b)]

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
- b) ☐ In view of the early submission of the proposed reply (within two months as set forth in MPEP § 707.07(f)), the period for reply expires on the mailing date of this Advisory Action, OR continues to run from the mailing date of the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on _____. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☐ The proposed amendment(s) will be entered upon the timely submission of a Notice of Appeal and Appeal Brief with requisite fees. *There do not appear to be any actual amendments, however the presence of claims in the "amendment under 37 CFR 1.116" (part 18) make this unclear.*
3. ☐ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search. (see NOTE below);
- (b) ☐ they raise the issue of new matter. (see NOTE below);
- (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE:

4. ☐ Applicant's reply has overcome the following rejection(s): *if the terminal disclaimer that applicants submitted say they intend to file, had been filed, they would have been overcome, but it still has not, it's not, so applicant's allegation of being in condition for allowance would appear to be a statement made by habit.*
5. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).

6. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: *if a value is given as positive, saying that it is positive, is not an inference, but a statement of fact. If applicants are now alleging that the specification means something other than what it apparently states (or more), appropriate proofs*
7. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.

8. ☒ For purposes of Appeal, the status of the claim(s) is as follows (see attached written explanation, if any):

Claim(s) allowed: _____

Claim(s) objected to: _____

Claim(s) rejected: 1-10, 27-29 + 31-34

Claim(s) withdrawn from consideration: _____

9. ☐ The proposed drawing correction filed on _____ a) ☐ has b) ☐ has not been approved by the Examiner.

10. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____

11. ☐ Other: *affidavits and/or references providing sufficient or complete (not partial) explanation should be able to clarify this issue in a supported manner, but if the examiner has only apparently contradictory information (or incomplete) such as*

pool conscience does not allow saying the apparent problems are resolved. The examiner is responsible for deciding if adequate support is present (claims 27-34), so unsupported or contradictory allegations and/or information is insufficient. Applicants may characterize an unwillingness to ignore apparent contradictions as "obstinate belief" (p.9), but if there are really no contradictions here are supportive ways to clarify. Allegations without clear support are insufficient when New Matter is an issue. As noted in page 2 of paper 18, Mr. Musaka's disclaimer does provide an effective discussion of Fig. 13, except for apparent contradictions from the written specification. As these issues are

MARIANNE PADGETT
PRIMARY EXAMINER